

Article 11.

Emergency Program to Reduce Home Foreclosures.

§ 45-100. Title.

This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act. (2008-226, s. 1; 2010-168, s. 9; 2012-79, s. 2.17(g).)

§ 45-101. Definitions.

The following definitions apply throughout this Article:

- (1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.
- (1a) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010.
- (1b) Home loan. – A loan that has all of the following characteristics:
 - a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.
 - b. The borrower is a natural person.
 - c. The debt is incurred by the borrower primarily for personal, family, or household purposes.
 - d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.
 - e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.
 - f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.
- (1c) Housing Finance Agency. – The North Carolina Housing Finance Agency.

- (2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.
- (3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term "servicer" in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.
- (3a) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010.
- (4) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010. (2008-226, s. 1; 2009-457, s. 3; 2010-168, ss. 1, 9; 2011-288, s. 1; 2012-79, s. 2.17(g).)

§ 45-102. Pre-foreclosure notice for home loans.

At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of home loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:

- (1) An itemization of all past due amounts causing the loan to be in default.
- (2) An itemization of any other charges that must be paid in order to bring the loan current.
- (3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.
- (4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.
- (5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.
- (6) The address, telephone number, and other contact information for the State Home Foreclosure Prevention Project of the Housing Finance Agency. (2008-226, s. 1; 2010-168, ss. 1, 9; 2012-79, s. 2.17(a), (g).)

§ 45-103. Pre-foreclosure information to be filed with the Administrative Office of the Courts for home loans.

(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. The Housing Finance Agency shall design and develop the State Home Foreclosure Prevention Project database, in consultation with the Administrative Office of the Courts. Only the Administrative Office of the Courts, the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database.

(b) As permitted by applicable State and federal law, optional information may be requested from the mortgage servicer to facilitate further review by the State Home Foreclosure Prevention Project described in G.S. 45-104. This optional information shall be used by the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable.

(c) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010. (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 2; 2012-79, s. 2.17(b), (g).)

§ 45-104. State Home Foreclosure Prevention Project and Fund.

(a) The purpose of the State Home Foreclosure Prevention Project is to seek solutions to avoid foreclosures for home loans. The Project may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Housing Finance Agency. The funds shall be held separate from any other funds received by the Housing Finance Agency in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. The Housing Finance Agency shall collect the fee. Upon receipt of the fee the Housing Finance Agency shall deposit the funds into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency shall manage the State Home Foreclosure Prevention Trust Fund.

(d) The Housing Finance Agency shall use funds from the State Home Foreclosure Prevention Trust Fund to compensate performance-based service contracts or other contracts and grants necessary to implement the purposes of this act in the following manner:

- (1) An amount, not to exceed the greater of two million two hundred thousand dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Housing Finance Agency, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.
- (2) An amount, not to exceed the greater of three million four hundred thousand dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.
- (3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in

foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

- (4) Any funds remaining in the State Home Foreclosure Prevention Trust Fund as of June 30, 2011, and any funds remaining in the State Home Foreclosure Prevention Trust Fund upon the expiration of each subsequent fiscal year shall be directed to the North Carolina Housing Trust Fund.

(e) The Housing Finance Agency shall have the discretion to enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.

(f) The Housing Finance Agency shall report to the General Assembly describing the operation of the program established by this act not later than May 1 of each year until the funds are completely disbursed from the State Home Foreclosure Prevention Trust Fund. Information in the report shall be presented in aggregate form and may include the number of clients helped, the effectiveness of the funds in preventing home foreclosure, recommendations for further efforts needed to reduce foreclosures, and provide any other aggregated information the Housing Finance Agency determines is pertinent or that the General Assembly requests. (2008-226, ss. 1, 5; 2010-168, ss. 1, 9; 2011-288, s. 3; 2012-79, s. 2.17(c), (f), (g).)

§ 45-105. Extension of foreclosure process.

The Housing Finance Agency shall review information provided in the database created by G.S. 45-103 to determine which home loans are appropriate for efforts to avoid foreclosure. If the Housing Finance Agency reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Executive Director of the Housing Finance Agency shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Executive Director of the Housing Finance Agency makes the determination that a loan is subject to this section, the Housing Finance Agency shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 4; 2012-79, s. 2.17(d), (g).)

§ 45-106. Use and privacy of records.

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks and administered by the Housing Finance Agency in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article. (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 5; 2012-79, s. 2.17(e), (g).)

§ 45-107. Foreclosure filing.

(a) For the duration of the program authorized by this Article, foreclosure notices filed on home loans on or after November 1, 2010, shall contain a certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

(b) The clerk of superior court or other judicial officer may have access to the pre-foreclosure database to confirm information provided in subsection (a) of this section. A materially inaccurate statement in the certification shall be cause for dismissal without prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding. (2008-226, s. 1; 2010-168, ss. 1, 9; 2012-79, s. 2.17(g).)